

(3) Submit a letter, including a schedule, giving assurance that an adequate level of participation in the project will be achieved within 5 years, and

(4) As appropriate, serve as the administering agency.

(p) The administering agency will:

(1) As appropriate, enter into a grant agreement or fund transfer agreement with the Natural Resources Conservation Service for:

(i) Receiving funds from the Natural Resources Conservation Service for administrative costs, cost sharing, and technical assistance, as appropriate, associated with carrying out the project,

(ii) Establishing detailed work schedules in accordance with the approved project application,

(iii) Establishing the maximum amount of administrative costs chargeable to the grant,

(iv) Establishing an adequate financial management system,

(v) Preparing a cost allocation plan,

(vi) Monitoring and reporting performance,

(vii) Reviewing applications for assistance from landowners or operators,

(viii) Certifying availability of funds, and

(ix) Complying with OMB Circular A-102 and other appropriate regulations,

(2) Enter into contracts with participants for the installation and maintenance of BMP's based on water quality plans developed by participants,

(3) Make cost-share payments to participants upon receipt of certification by NRCS,

(4) Issue modifications to participant RCWP contracts,

(5) Develop average cost rates for each practice applicable in the project area.

(6) Sample and inspect materials used in the installation of BMP's,

(7) Establish a contract violations and appeals and collections process,

(8) Provide for public involvement in the implementation of RCWP in a project area, and maintain a mailing list of interested individuals and organizations for informing the public about the activities contemplated and carried out in the project area, and

(9) Maintain records, provide necessary facilities, personnel, and legal counsel for carrying out these responsibilities.

(q) The Governor of each State will:

(1) In order to qualify for assistance under RCWP:

(i) Establish priorities for RCWP project areas in the State,

(ii) Coordinate the development of RCWP project applications with the SRCWCC and local agencies,

(iii) Submit, in order of priority, RCWP project applications to the Administrator, NRCS, through the State Conservationist, NRCS, and

(iv) Recommend an eligible State or local agency to serve as the administering agency of the project, or request USDA to be the administering agency.

(2) Where appropriate, with the State Conservationist, NRCS, set forth the activities of the SRCWCC in a written agreement,

(3) Assign additional State and local agencies or individuals to membership on the SRCWCC, as appropriate, and

(4) Reach agreement with the State Conservationist, NRCS, in selecting the administering agency.

§ 634.5 Definitions.

(a) *Adequate level of participation.* An adequate level of participation is reached when participants, having control of 75 percent of the identified critical area or source of the pollution problem in the project area, are under contract. Exceptions may be made where the approved agricultural portion of the 208 plan provides data and analyses which indicate that a greater or lesser percentage of the critical area or source treated is needed to attain water quality standards or water quality goals. Fifty (50) percent of the adequate level of participation is to be achieved within 3 years; the remainder within 5 years.

(b) *Administering agency.* A soil conservation district, State soil and water conservation agency, or State water quality agency that enters into an agreement with the State Conservationist, NRCS, to administer assigned responsibilities for RCWP projects; or ASCS, when USDA retains contract administration.

(c) *Administrative cost.* Grant and fund transfer costs, including allowable costs incurred by the Administering agency in contract administration. These costs, indirect and direct, include charges for personnel, travel, materials, and supplies. The costs are limited to a maximum of 5 percent of the Federal share for BMP cost.

(d) *Agreement.* A legal instrument reflecting the relationship between NRCS and the administering agency for performance of RCWP activities.

(e) *Agricultural nonpoint source pollution.* Pollution originating from existing nonpoint sources that are (a) agriculturally related, including runoff from animal waste disposal areas and from land used for livestock and crop production, or (b) silviculturally related pollution.

(f) *Agricultural portion of a 208 plan.* That portion of the 208 plan that deals with agriculture and those silvicultural activities related to farming and ranching enterprises.

(g) *Appeals board.* A group of three or more individuals, including a hearing officer, established by the administering agency with the concurrence of the State conservationist, NRCS, to review asserted contract violations, hear associated appeals, and report its findings, conclusions, decisions, and recommendations in State or locally administered projects.

(h) *Average cost.* The calculated cost, determined by recent actual local costs and current cost estimates, considered necessary for carrying out BMP's or an identifiable unit thereof.

(i) *Best Management Practice (BMP).* A single practice or a system of practices included in the approved RCWP application that reduces or prevents agricultural nonpoint source pollution to improve water quality.

(j) *BMP cost.* The amount of money actually paid or obligated to be paid by the participant for equipment use, materials, and services for carrying out BMP's or an identifiable unit of a BMP. If the participant uses his or her own resources, the cost includes the computed value of his or her own labor, equipment use, and materials.

(k) *Contract.* The legal document, that includes the water-quality plan and is executed by the participant and

the administering agency. It details the agreement between parties for carrying out BMP's on the participant's land.

(l) *Cost-share level.* The percentage of the total cost of installing BMP's included in the participant's contract that is paid by the administering agency.

(m) *Critical areas or sources.* Those finite areas or sources of agricultural nonpoint source pollutants identified as having the most significant impact on the quality of the receiving waters.

(n) *Federal Management Circular FMC 74-4.* "Cost Principles Applicable to Grants and Contracts with State and Local Governments."

(o) *Financial burden.* The participant's contribution to the total cost of BMP's that would be inequitable or probably prevent participation in RCWP.

(p) *Identifiable unit.* A component of a BMP that can be clearly identified in carrying out BMP's in the water quality plan.

(q) *Letter of Credit—Treasury Regional Disbursing Officer System.* The system whereby the letters of credit are maintained and serviced by Treasury disbursing centers and Treasury regional disbursing officers.

(r) *Management agency.* The Federal, State, interstate, regional, or local agency designated by the Governor to carry out the approved agricultural portion of the 208 water-quality management plan.

(s) *OMB Circular A-34.* "Instructions on Budget Execution."

(t) *OMB Circular A-102 (Rev.)* Office of Management and Budget Uniform Administrative Requirements for Grants-in-Aid to State and local governments.

(u) *Offsite benefits.* Those favorable effects of BMP's that occur away from the land of the participant receiving RCWP assistance and accrue to the public as a result of improved water quality.

(v) *Participant.* A landowner or operator who applies for and receives assistance under RCWP.

(w) *Participants water quality plan.* The plan which identifies critical agricultural nonpoint source(s) of water quality problems and sets forth BMP's which contribute to meeting the water quality objectives of the project.

(x) *Privately owned rural land.* Those lands not held by Federal, State, or local governments which include cropland, pastureland, forest land, rangeland, and other associated lands.

(y) *RCWP projects.* The total system of BMP's, institutional arrangements, and technical, cost-sharing, and administrative assistance activities that are authorized in a RCWP project area.

(z) *Standards and specifications.* Requirements that establish the minimum acceptable quality level for planning, designing, installing, and maintaining BMP's.

(aa) *State.* Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(bb) *Technical assistance cost.* Those direct and indirect costs associated with the preparation and review of participant water quality plans; design, layout and application of BMP's; and investigations associated with monitoring and evaluating progress toward meeting project objectives.

(cc) *Treasury Circular 1075 (Rev.).* Uniform Administrative Requirements for Grants-in-Aid to State and local governments.

Subpart B—Project Authorization and Funding

§ 634.10 Applicability.

RCWP is applicable in project areas that meet the criteria for eligibility contained in § 634.12 and are authorized for funding by the Administrator, NRCS.

§ 634.11 Availability of funds.

(a) The provisions of the program are subject to the appropriation of funds by Congress to the U.S. Department of Agriculture.

(b) The allocation of funds to the administering agencies is to be made on the basis of the total funds needed to carry out the project.

(c) The obligation of Federal funds for RCWP contracts with participants is to be made on the basis of the total contract costs.

§ 634.12 Eligible project areas.

(a) Only those project areas which are included in an approved agricultural portion of a 208 water quality management plan, or revised portions thereof, and have identified agricultural nonpoint source water quality problems are eligible for authorization under RCWP. Those critical areas or sources of pollutants significantly contributing to the water quality problems are eligible for financial and technical assistance.

(b) The management agency designated by the Governor under section 208(c)(1) of the Act to implement the agricultural portion of the 208 plan must assure in writing in the project application that there will be an adequate level of participation by land owners or operators with critical areas or sources in a project area.

(c) An RCWP project area is a hydrologically related land area. Exceptions may be made for ease of administration, or to focus on concentrated critical areas. To be designated as an RCWP project area eligible for authorization, the area's water quality problems must be related to agricultural nonpoint source pollutants, including sediment animal waste, irrigation return flows, runoff, or leachate that contain high concentrations of nitrogen, phosphorus, dissolved solids, toxics (pesticides and heavy metals), or high pathogen levels. Generally, the project areas will be less than 200,000 acres.

§ 634.13 Project applications.

(a) The SRCWCC is to assure that a process exists to prepare the RCWP project applications for submission by the Governor in order of priority to the Administrator, NRCS, through the State Conservationist, NRCS. This process must include the opportunity for public participation, especially participation by potential RCWP participants. Applications will be submitted in conformance with OMB Circular A-95.

(b) The preparation and submission of applications are to be based on the priorities established by the Governor and data and information in the approved agricultural portion of the